



U.S. Department of Justice

United States Marshals Service

Office of General Counsel

*Washington, DC 20530-0001
(703) 740-3943*

Mr. Michael Morisy
MuckRock News
DEPT MR 20608
411A Highland Avenue
Somerville, MA 02144-2516

JUL 10 2019

RE: Freedom of Information/Privacy Act Request No. 2015USMS28830
Subject: Uses of Biometrics

Dear Mr. Morisy:

The United States Marshals Service (USMS) is responding to of your Freedom of Information/Privacy Act (FOIA/PA) request for information pertaining to mobile biometric technologies, including but not limited to purchasing and procurement documents, i.e., purchase orders, RFPs, responses to RFPs, invoices and contracts, policy, procedural, and training documents, i.e., use policies, standard operating procedures, training materials, privacy assessments, data retention policies, and other guidelines, programming documents, i.e., funding opportunity announcements, grant applications and grant status/process, reports to legislative bodies, annual reports, audit documents, i.e., audits of the system, misuse reports, and reports to oversight bodies, the total number of individuals whose biometric data has been collected over the last three years, the total number of biometric data points, contained in the agency's database, the retention period for biometric data, number of biometric devices purchased and in use, total number of authorized users of the mobile biometric devices, which external agencies and entities have access to biometric data in the database and under what condition, whether the biometric data is combined with biographical data such as name and address in the database, and the process by which data is entered into the database.

Pursuant to your request, the Marshals Service conducted a search of its files in the Investigative Operations Division (IOD) and located 17 pages of documents responsive to your request. After carefully reviewing the records responsive to your request, we determined that 17 pages are appropriate for release. Seventeen pages are released with this letter.

Names and telephone numbers of Marshals Service employees and a third party have been deleted pursuant to FOIA exemptions (b)(7)(6), (b)(7)(C) and (b)(7)(F). FOIA Exemption

(b)(6) allows an agency to withhold personnel, medical, and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Records that apply to or describe a particular individual, including investigative records, qualify as “personnel,” “medical,” or “similar files” under Exemption 6. FOIA Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes to the extent that the production of such records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. A discretionary release of such records is not appropriate. See United States Department of Justice (DOJ) v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989).

Finally, FOIA Exemption (b)(7)(F) protects law enforcement information that “could reasonably be expected to endanger the life or physical safety of any individual.” 5 U.S.C. § 552(b)(7)(F) (2006), amended by OPEN Government Act of 2007, Pub. L. No. 110175, 121 Stat. 2524. Courts have routinely upheld the use of Exemption (b)(7)(F) to protect the identities of law enforcement agents, as well as protect the names and identifying information of non-law enforcement federal employees, local law enforcement personnel, and other third persons in connection with particular law enforcement matters. See Rugiero v. DOJ, 257 F.3d 534, 552 (6th Cir. 2001); Johnston v. DOJ, No. 97-2173, 1998 WL 518529, *1 (8th Cir. Aug. 10, 1998).

Accordingly, the personally identifiable information of law enforcement officers and government employees was withheld from the responsive documentation. The disclosure of such sensitive information contained in records compiled for law enforcement purposes to the public could subject law enforcement officers and other government personnel to harassment and unwelcome contact. This could disrupt and impede official agency activity, as well as endanger the safety of law enforcement officials. Additionally, the personally identifiable information of third parties named in the records was withheld. The disclosure of third party information could constitute an unwarranted invasion of personal privacy and subject the individuals to embarrassment, harassment, and undue public attention. Individuals have a recognized privacy interest in not being publicly associated with law enforcement investigations, not being associated unwarrantedly with alleged criminal activity, and controlling how communications about them are disseminated.

Deliberative information and investigative details have been deleted pursuant to exemptions (b)(5) and (b)(7)(E) of the Freedom of Information Act, 5 U.S.C. § 552.

Exemption (b)(5), the deliberative process privilege, protects the integrity of decision-making practices within an agency by exempting from mandatory disclosure exemptions, conclusions, and recommendations included within non-final inter-agency or intra-agency memoranda or letters. Public release of internal pre-decisional communications could discourage the expression of candid opinions among agency personnel. Employee trepidation regarding public release of internal agency communications and draft documents could inhibit the free and frank exchange of information among agency personnel. The purpose of the deliberative process is to prevent injury to the quality of agency decisions. NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975). Exemption (b)(7)(E) exempts from release information that would disclose law enforcement techniques or procedures, the disclosure of which could reasonably be expected to risk circumvention of the law.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that would be subject to the

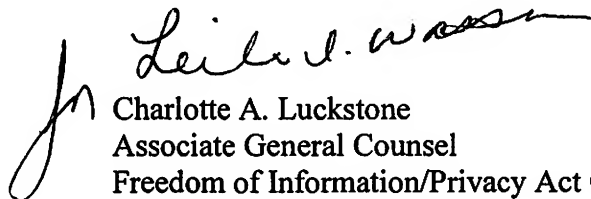
requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, D.C. 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home.portal.html>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information/ Privacy Act Appeal."

You may contact Charlotte Luckstone or our FOIA Public Liaison at the telephone number listed above for any further assistance and to discuss any aspect of your request.

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, email at ogis@nara.gov, telephone at 202-741-5770; toll free at 1-877-684-6448, or facsimile at 202-741-5769.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlotte A. Luckstone", is written over a large, stylized initial "J".

Charlotte A. Luckstone
Associate General Counsel
Freedom of Information/Privacy Act Officer
Office of General Counsel